

**IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH**

**RSA No.3079 of 2015 (O&M)
and
RSA No.4575 of 2015
Date of Decision:10.12.2018**

Naresh Kumar and others

...Appellant(s)

Versus

Rakesh Kumar

...Respondent(s)

CORAM:- HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Vikram Singh, Advocate for the appellants.
Mr. Akshay Kumar Goel, Advocate for the respondent.

ANIL KSHETARPAL, J.

This judgment would result in disposal of two appeals bearing RSA Nos. 3079 and 4575 of 2015 as both these appeals arise out of a common judgment passed by the learned first appellate court.

The defendants-appellants are in the regular second appeal against the judgment passed by the learned first appellate court, reversing the discretion exercised by the learned trial court, ordering refund of the earnest money with interest.

The learned first appellate court has found that the learned trial court did not discuss or give any reason why the learned first appellate court has chosen to grant alternative relief rather than specific performance of the agreement to sell.

In the present case, the plaintiff filed a suit on the basis of agreement to sell dated 26.11.2007 for sale of 2 kanal and 2 marla of land for sum of Rs.3,00,000/- allegedly executed by late Shri Rajender Parsad, predecessor-in-interest of the defendants. The total sale consideration is alleged to have been paid and no date for execution and registration of the sale-deed was fixed. Rajender Parsad died on 22.2.2009 and after service of

notice, the plaintiff filed the present suit on 26.7.2010. In order to prove execution of the agreement to sell, Keshu Ram Gupta, Notary Public, who attested the agreement to sell, has appeared as PW-1 and has also produced his register maintained by him to prove that Late Shri Rajender Parsad had also signed in the aforesaid register/Note Book. Stamp Vendor, PW-3 has also been examined who had proved that non-judicial stamp paper of Rs.10 was purchased by Rajender Parsad for execution of the agreement to sell and signed in the register maintained by him.

The plaintiff, apart from appearing himself, has also examined Fingerprint and Handwriting Expert as PW-4 to prove that all the three signatures of Rajender Parsad matched. Thus, the learned first appellate court chose to grant decree for specific performance of the agreement to sell.

Learned counsel for the appellant has submitted that Rajender Parsad was an illiterate person and working as a Driver with Transport Company owned by uncle of the plaintiff. He has further submitted that signatures of Rajender Parsad might have been obtained at that point of time. He has also submitted that there was undue delay in filing of the suit, as agreement to sell is dated 26.11.2007, whereas the suit was filed on 26.7.2010. He also submitted that no explanation has come forward why filing of the suit was delayed for two years and 8 months.

As regards employment of Rajender Parsad with uncle of the plaintiff, it may be noticed that the defendant has admitted in evidence that Rajender Parsad stopped working as a Driver with Transport Company of

the uncle of the plaintiff in the end of 2006, whereas agreement to sell is dated 26.11.2007.

As regards delay in filing of the suit, it may be noted that as per agreement to sell, no target date for execution and registration of sale-deed was fixed. Thus, second part of Article 54 of the Schedule to the Limitation Act, 1963 would apply and limitation would begin to run from the date of refusal. In the present case, in any case even if the limitation would begin to run from the date of agreement to sell, the suit is within limitation. Even if the first part of the Article 54 is made applicable, in this case entire payment had been made to late Shri Rajender Parsad.

Learned counsel for the appellant has further submitted that no effort has been made to compare the signatures of Rajender Parsad with his admitted signatures. He submitted that the plaintiff has to stand on his own legs. In the considered view of this Court, there is no substance in the argument of learned counsel for the appellant, because the plaintiff is not related to defendants. The defendants are heirs of Late Shri Rajender Parsad. It was for them to produce a document before the court which was admittedly executed by Rajender Parsad during his life time. Rajender Parsad was working as a Driver. However, the defendants have not produced any evidence to prove that signatures of Rajender Parsad did not exist on the argument to sell and register of Stamp Vendor and Notary Public. No doubt, the plaintiff has to stand on his own legs, however, the defendants are also required to prove their pleaded case.

In the present case, the defendants have failed to prove their pleaded case. In these circumstances, this Court does not find any ground to

interfere with the discretion exercised by the learned first appellate court, which is based upon cogent reasons supported by the evidence.

In view of the above, there is no ground to interfere. Hence, regular second appeal is dismissed. Pending application(s), if any, shall also stand disposed of, in terms thereof.

10.12.2018
mks

(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned: Yes/No
Whether Reportable: Yes/No